SINGAPORE REPORTS

RE T.T. RAJAH; THE LAW SOCIETY OF SINGAPORE v. THAMPOE T. RAJAH

[O.C.J. (Wee Chong Jin C.J., Kulasekaram & Tan Ah Tah JJ.)
February 12, 1973)

[Singapore — Originating Summons No. 342 of 1972]

Advocate and Solicitor — Improper conduct — Using grossly offensive language and threatening gestures — Encouraging gallery of the court to bring court into contempt and disrepute — Using court as a forum for expressing political views — Improper statements — Whether conduct amounts to professional misconduct — Sentence — Suspension for 2 years — Legal Profession Act (Cap. 217) s. 84(2)(b), & (h) and 93(2).

The respondent an advocate and solicitor acted as counsel for several political detainees in 13 private summonses. The political detainees alleged that certain police officers had wrongfully used criminal force against them contrary to section 352 of the Penal Code. The Attorney General complained to the President of the Law Society of the conduct of the respondent in the proceedings connected with the private summonses aforesaid. The statement of the case against the respondent before the Disciplinary Committee was:

(i) using grossly offensive and improper expressions and threatening gestures to defence counsel in the course of the proceedings and adjournments.

(ii) making improper statements in the course of the proceedings.

(iii) improperly conducting himself in a manner to encourage the gallery of the court to bring the court into contempt and disrepute.

(iv) improperly seeking to convert the court into a forum for expressing political views unconnected with the issue before the court.

The Disciplinary Committee found that (a) the respondent made improper remarks addressed to counsel appearing for the defendants and to the defendants during the many adjournments during the trial; (b) the respondent was guilty of contempt of court which was dishonourable conduct amounting to professional misconduct; (c) the respondent abused his rights as counsel and used the court as a political forum and was guilty of professional misconduct. The majority of the Disciplinary Committee also found that the respondent's interjection during the trial of one of the defendants was an insulting and grossly improper remark made in the face of the court amounting to professional misconduct. The Disciplinary Committee came to the conclusion that the respondent's conduct was not of sufficient gravity to come within section 84(2)(b) of the Legal Profession Act but was conduct which fell within section 84(2)(h) of the said Act. They also ordered the respondent to pay $2,000 to the Law Society as costs and disbursements pursuant to section 93(2) of the said Act.

On application to the court under section 84 of the said Act.

Held: (1) the findings of the Disciplinary Committee and the conclusions they had reached were proper and the court accepted the same;

(2) the conduct and words spoken by the respondent were both disgraceful and dishonourable and in the interests of the profession, the proper administration of justice and of the public a serious view should be taken of this matter and the respondent should be suspended from practice for two years;

(3) no case has been made out for the court to interfere with the order of costs made by the Disciplinary Committee. The respondent should also pay the costs of this application.

ORIGINATING SUMMONS.

Sachi Saurajen for the Law Society.

T. T. Rajah in person.

Wee Chong Jin C.J. (delivering judgment of the court): This is an application calling upon the respondent, an advocate and solicitor, to show cause why he should not be dealt with under the provisions of section 84 of the Legal Profession Act (Cap. 217) (hereinafter referred to as "the Act").

The proceedings arose out of a complaint by the Attorney-General to the President of the Law Society complaining of the conduct of the respondent while acting as Counsel in certain proceedings before two Magistrates' Courts in 1971. The respondent acted as Counsel for several complainants in 13 private summonses who were being detained under the Internal Security Act (Cap. 115). The complainants alleged that the authorities had wrongfully obliged them to do work which, as political detainees, they were not bound to do. They alleged that they went on a hunger strike in protest and were forcibly fed by certain prison officers who had thereby unlawfully used criminal force against them contrary to section 352 of the Penal Code.

The complaint by the Attorney-General was referred to the Inquiry Committee under section 86(2) of the Act which after due investigation reported to the Council of the Law Society. The Council of the Law Society having considered the report of the Inquiry Committee determined that there should be a formal investigation by a Disciplinary Committee and a Disciplinary Committee was duly appointed by the Chief Justice.

The Disciplinary Committee heard and investigated the matter, the hearing lasting seven full days, and determined that cause of sufficient gravity for disciplinary action under section 84 of the Act exists and as a result the respondent is before us to show cause why he should not be subject to be disciplined as provided by Section 84(1) of the Act.

In the proceedings before the Disciplinary Committee, the statement of the case against the respondent, who appeared on his own behalf, charged him with the following acts of professional misconduct: —

1. In the course of proceedings and during adjournments using grossly offensive and improper expressions and threatening gestures to defence counsel, namely "thug", "lackey", "government agent" and "running dog". Uttering the words "Ganesan! Learned! What learned! How can I call him 'learned'? He is a Government Agent, a D.P.P." Stating to the court that "learned brethren" and other such phrases were "humbug". Challenging defence counsel to a fight with the words, or words to that effect: "Where is your bravery now? You coward! You want to fight? Come!" while making threatening gestures. Shouting at defence counsel while he was cross-examining and saying: "You were crying. You coward. You were almost in tears yesterday. Where is your bravery now."

2. During the cross-examination of a complainant by defence counsel, on his referring to the pregnancy of a prison wardress, interjecting the question in reference to defence counsel: "Were you responsible for it?".

3. Making improper statements in the course of the proceedings, namely:

(i) "This court is an organ of power. What is power? This phrase speaks for itself."

(ii) "This is a police court and therefore there is no proper trial."

(iii) "This court showed interest prejudice in these cases."

(iv) "They do not wish to proceed any further. The word "boycott" means that. They say this is a police court.

Identification parade not held. My instructions are that there is no fair trial. They say that they fear, rightly, that they cannot get justice. This court is prejudiced. This court is an organ of power."

4. Improperly conducting himself in a manner calculated to encourage the gallery of the court to bring the court into contempt and disrepute by:

(i) constantly telling the witnesses when they were abusing the Government and the Prime Minister to face the gallery.

(ii) congratulating the gallery when the crowd clapped in response to abusive remarks about the Government and the Prime Minister.

(iii) accusing the magistrate of bullying his witness when the magistrate instructed the witness not to shout.

(iv) making, in the course of the proceedings, abusive remarks to the defendants who were prison officials constantly calling them "sadists", "bandists", "lackeys", "running dogs" and "cowards", and persisting in such behaviour despite repeated warning by the magistrate.

5. Improperly seeking to convert the court into a forum for expressing political views unconnected with the issues before the court, by saying:

(i) that if he had the opportunity he would have brought the action not against the prison officials but the "other person who is in charge of everything — Lee Kuan Yew".

(ii) that "actual culprit is the authorities. I can't bring the authorities here — Prime Minister".

(iii) "In her (complainant's) evidence, she said she fights for a just cause which is supported by the people".

At the outset of the proceedings before the Disciplinary Committee, the respondent raised a number of preliminary objections. We need refer to the only one which is also raised presently before us. He objected to two members of the Disciplinary Committee on the ground that they were or might be biased against him. Against one member he alleged personal bias or a genuine apprehension of personal bias because (a) they represented opposite parties in a contested tenancy action in the 1950's; (b) negotiations for the sale by the respondent to that member of a set of the Malayan Law Journal Reports fell through as that member refused to buy at the price quoted but offered $200 less and (c) that member was a Britisher by birth and behaved like a Shylock and a die-hard colonialist. Against another member the respondent alleged he was under a genuine apprehension that he was unfriendly and may have a political bias against him the reason being that he did not respond to friendly greetings. This objection was overruled. In our opinion this objection, which was based on such flimsy grounds, is entirely devoid of merit.

The Disciplinary Committee in its Report, after reviewing the evidence, made the following findings of fact. They found that the respondent, during the many adjournments during the trials which took place before two magistrates, made improper remarks addressed to Counsel appearing for the defendants and to the defendants and of these improper remarks they took the view that it was deplorable conduct.

The majority members of the Disciplinary Committee also found that during the trial of one defendant the respondent interjected a remark which in their view was an insulting and grossly improper remark made in the face of the court clearly amounting to professional misconduct. The context in which this remark was made appears from the following passage recorded by the magistrate: —

"*Ganesan* Q. "Normally the feeding party consists of seven or eight including the male nurse?"

Witness A. "Uncertain".

Ganesan Q. "In this case, there were three?"

Witness A. "Yes, including the female prison wardress. It was the male warder who laid hands on us. The female prison wardress did not come in usually?"

Ganesan Q. "She was pregnant that night".

Rajah, interjecting "Were you (Ganesan) responsible for it"."

The Disciplinary Committee also found that in his submissions to the court the respondent addressed the following words to the court: —

"They do not wish to proceed any further. The word 'boycott' means that. They say this is a police court. Identification parade not held. My instructions are that there is no fair trial. They say that they fear, rightly, that they cannot get justice. This court is prejudiced. This court is an organ of power."

They found that the respondent was himself endorsing his clients' belief that they could not get justice from the court. They took the view that by so doing the respondent was guilty of a contempt of the court and which was also dishonourable conduct amounting to professional misconduct.

The Disciplinary Committee also found the respondent addressed the court in terms which exposed the political animus which actuated his clients when they indulged in political harangues. The Disciplinary Committee found that the respondent abused his rights as counsel and that in making the remarks in question he must have been conscious that he was deliberately using the court as a political forum. The Disciplinary Committee found the respondent in making those remarks was guilty of professional misconduct.

On all the above findings of fact the Disciplinary Committee came to the conclusion that the respondent's conduct was not of sufficient gravity to come within section 84(2)(b) of the Act but was conduct which clearly fell within section 84(2)(h). They considered that the respondent's conduct, though improper, could not fairly be described as grossly improper but was "of sufficient gravity for disciplinary action under section 84". They also ordered the respondent to pay $2,000 to the Law Society as costs and disbursements pursuant to section 93(2).

At the hearing of this application the respondent again appeared on his own behalf and urged several grounds why the Disciplinary action exists under section 84 of the Act.

He reiterated before us the contention that two members of the Disciplinary Committee were biased against him or in any event that he had reasonable and justifiable grounds to believe that they were. This contention we have dealt with earlier.

Another ground was that the proceedings initiated against him were a nullity ab initio by reason of the fact that the complaint was made by the Attorney-General. He submitted that the real complainant was or should have been counsel who appeared for the defendants in the summonses heard by the magistrates. Another reason why the proceedings were a nullity was

that the complaint against him was not supported by an affidavit or statutory declaration as required by section 86(3) of the Act as the real complainant should have been counsel who acted for the defendants in the criminal proceedings. We are of the opinion that this ground is without any substance.

Another ground was that he had not been given a fair and proper hearing and investigation of the charges made against him by the Law Society. The relevant sections of the Act dealing with disciplinary proceedings against an advocate and solicitor have, in our opinion, clearly been complied with. The respondent submitted that the President of the Law Society did not act impartially by not requiring counsel for the defendants in the magistrates' courts to make a formal complaint against him to the Law Society and by acting on the Attorney-General's letter of complaint. The respondent also submitted that he was deprived of the opportunity to fully elucidate and elaborate the whole case for and against him because the Disciplinary Committee had requested both parties to complete their submissions by 1 p.m. on the last day of the hearing. It is conceded, however, that the hearing was finally concluded at 4.30 p.m. on that day. In our judgment this ground is totally unfounded.

Another ground was that the respondent was prejudiced by the calling of the two magistrates, who tried the summons cases initiated by the respondent's clients, after both parties had closed their respective cases and despite objection by the respondent. Proceedings before the Disciplinary Committee are proceedings before a domestic tribunal and are different from proceedings before the ordinary courts. The respondent was given the opportunity and indeed questioned the magistrates at length and we find no substance in this ground.

Another ground relates to the finding that the respondent in his submissions to the magistrate's court endorsed his clients' belief that the court was prejudiced and an organ of power and his clients' fear that they could not get justice from the court. When the respondent gave evidence before the Disciplinary Committee on this alleged contempt of court all he said was he had ample justification for his statements. Before us the respondent complained that the Disciplinary Committee failed to question him on his grounds of justification and again asserted that he was justified in saying to the court that the court was prejudiced, an organ of power and a court where his clients would not get justice. In our judgment this ground is completely without substance.

The ground most relied on by the respondent was that the Disciplinary Committee had no jurisdiction to determine whether or not cause for disciplinary action exists under section 84 of the Act in respect of words spoken by Counsel during judicial proceedings which clearly amount to contempt of court. The argument is that absolute privilege attaches to words spoken by Counsel in the face of the court and the privilege covers any proceedings for disciplinary action by his professional body. That is an argument unsupported by authority so far as we are aware. It seems to us patently clear that where an advocate and solicitor, acting in his capacity as counsel before a court either by conduct or by words spoken does or says something, whether or not the conduct or words amount to a contempt of court, which could reasonably be regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then a Disciplinary Committee properly appointed and seised of the matter has jurisdiction to decide whether or not he has been guilty of professional misconduct. In our judgment the doctrine of privilege, which is but a weapon of defence, is ineffective so far as domestic disciplinary proceedings are concerned.

Lastly it is contended that the findings of the Disciplinary Committee were against the weight of the evidence. We disagree entirely and we accept unhesitatingly the findings of the Disciplinary Committee and the conclusion they had reached. We are also of of the opinion that no case has been made out for us to interfere with the order of costs made by the Disciplinary Committee.

We now deal with the question as to what penalty should be imposed. On the facts the conduct and the words spoken by the respondent were both disgraceful and dishonourable and we consider it our duty in the interests of the profession, of the proper administration of justice and of the public that we ought to take a serious view of this particular matter where the facts disclose professional impropriety towards a court, towards another advocate and solicitor and towards a defendant in criminal proceedings. Accordingly we order that the respondent be suspended from practice for a period of two years and that he pays the costs of this application.

Order accordingly.

P.G. RALPH v. PUBLIC PROSECUTOR

[A.Cr.J. (Winslow J.) February 14, 1973]

[Singapore — Magistrate's Appeal No. 47 of 1972]

Penal Code, s. 408 — Criminal breach of trust — Bribery and corruption — Deceiving principal — Prevention of Corruption Act (Cap. 104), s. 6(1)(c).

Criminal Law and Procedure — Appeal — Powers of appellate court — Criminal Procedure Code (Cap. 113), s. 251.

The appellant was the former manager of South British Insurance Co. Ltd. He was convicted by the First District Judge on each of four charges of corruption under section 6(1)(c) of the Prevention of Corruption Act (Cap. 104) and a charge of criminal breach of trust in respect of some $102 000 under section 408 of the Penal Code and sentenced to 2 years imprisonment on each of the five charge. All the charges related to one transaction namely that the accused had made a profit of some $102,000 as a result of knowingly practising a deception on his principal company at their office at Auckland. The allegation was that he deceived the company into the belief that he had sold some 201.250 rights (which the company had been entitled to) to one Choudhury in March 1969 at 25 cents per right when in fact they were sold to others at a profit. On appeal the main question for determination was whether Choudhury was an absolutely truthful witness when he denied in evidence that he had never been approached to buy these rights in March 1969. It was contended on behalf of the appellant that the District Judge:

(i) did not consider the confession made by Choudhury on